

ORIGINAL



BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

200 JAN 16 A 10:08

DOCKETED

JAN 16 2008

DOCKETED BY

IN THE MATTER OF QWEST CORPORATION'S
PETITION FOR ARBITRATION AND APPROVAL
OF AMENDMENT TO INTERCONNECTION
AGREEMENT WITH ARIZONA DIALTONE, INC.
PURSUANT TO SECTION 252(b) OF THE
COMMUNICATIONS ACT OF 1934, AS
AMENDED BY THE TELECOMMUNICATIONS
ACT OF 1996 AND APPLICABLE STATE LAWS.

DOCKET NO. T-01051B-07-0693

DOCKET NO. T-03608A-07-0693

PROCEDURAL ORDER

BY THE COMMISSION:

On December 17, 2007, Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") a Petition for Arbitration under 47 U.S.C. § 252(b) and Arizona Administrative Code ("A.A.C.") R14-2-1505 ("Petition"). In its Petition, Qwest requested that the Commission resolve issues related to the Interconnection Agreement ("ICA") between Qwest and Arizona Dialtone, Inc. ("Arizona Dialtone"). According to Qwest, the issues derive from Arizona Dialtone's refusal to enter into an amendment to the current ICA ("ICA Amendment") that would implement changes related to unbundled access to mass market local circuit switching, changes that Qwest asserts are mandated by federal law, specifically the Federal Communications Commission's Triennial Review Remand Order¹ ("TRRO") and 47 C.F.R. § 51.319(d). Qwest asserts that Arizona Dialtone has refused to transition its UNE-P services as required by the TRRO and federal regulations and has refused to enter into the ICA Amendment to implement TRRO-mandated changes. Qwest asks that the Commission arbitrate each disputed issue included in its Petition, resolve each issue in Qwest's favor, find that its proposed ICA Amendment is consistent with the applicable law, issue an order adopting its ICA Amendment, and grant such other relief as is fair and justified. Arizona Dialtone has not filed a reply in the Arbitration matter.

¹ In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand, 20 F.C.C.R. 2533 (2005).

1 Also on December 17, 2007, Qwest filed a Complaint against Arizona Dialtone, requesting
2 that the Commission (1) declare that the ICA requires Arizona Dialtone to compensate Qwest at the
3 transitional rate for UNE-P PAL and POTS for embedded services for a one-year transition period
4 that began March 11, 2005, and at the rate for alternative services for new orders thereafter; (2)
5 compel Arizona Dialtone to pay such charges to Qwest; (3) compel Arizona Dialtone to pay late
6 payment charges on the amounts ordered to be paid; (4) compel Arizona Dialtone to execute the ICA
7 Amendment and to comply with its obligations thereunder; and (5) award such other relief, including
8 but not limited to appropriate fines or penalties, as the Commission deems just and reasonable.
9 Arizona Dialtone has not yet filed a response in the Complaint matter.

10 A joint procedural conference for the Arbitration matter and the Complaint matter was held
11 on January 14, 2008, at the Commission's offices in Phoenix, Arizona. Qwest and Arizona Dialtone
12 each appeared through counsel. Because it was Qwest, an ILEC, rather than Arizona Dialtone that
13 requested negotiations in the Arbitration matter, and 47 U.S.C. § 252(b) allows a party to a
14 negotiation to petition for arbitration within a specified period after an ILEC receives a request for
15 negotiations, Qwest and Arizona Dialtone were both asked to state their positions on (1) Qwest's
16 authority to petition for arbitration under 47 U.S.C. § 252 and (2) the applicability of the 47 U.S.C. §
17 252 timelines. As a full discussion of these issues was not possible at the procedural conference,
18 Qwest and Arizona Dialtone were directed to file briefs on those issues, including citations to
19 relevant legal authorities, legal analysis, and copies of any cited legal authorities that are not readily
20 available, by January 28, 2008.

21 Also at the procedural conference, Qwest and Arizona Dialtone were asked for their positions
22 on consolidating the Arbitration matter and the Complaint matter. Neither Qwest nor Arizona
23 Dialtone objected to consolidating the two matters. The issue of consolidation was taken under
24 advisement.

25 In light of the issue regarding Qwest's authority to petition for arbitration under 47 U.S.C. §
26 252, Qwest and Arizona Dialtone were also asked whether they objected to suspending the timelines
27 under 47 U.S.C. § 252, assuming that they apply. Qwest objected to a suspension of the timelines,
28 while Arizona Dialtone did not. As a result of Qwest's objection, the hearing in the Arbitration

1 matter was tentatively scheduled for February 11, 2008. Counsel for Qwest and Arizona Dialtone
2 indicated that this date appeared to be acceptable, and counsel for Qwest was instructed to make a
3 filing as soon as possible if that should prove to be incorrect upon further inquiry. Counsel for Qwest
4 was also instructed that requesting a different hearing date would likely result in suspension of the 47
5 U.S.C. § 252 timelines.

6 Because the factual premise for the Arbitration matter and the Complaint matter are the same,
7 Qwest and Arizona Dialtone do not object to consolidation of the matters, and efficiency would be
8 served by having both matters considered in the same proceeding, the two matters should be
9 consolidated if the Arbitration matter is allowed to proceed. However, consolidation is not being
10 ordered at this time, pending resolution of the issues concerning Qwest's authority to petition for
11 arbitration under 47 U.S.C. § 252 and the applicability of the 47 U.S.C. § 252 timelines.

12 IT IS THEREFORE ORDERED that **Qwest and Arizona Dialtone shall each file, no later**
13 **than January 28, 2008, a brief** discussing (1) Qwest's authority to petition for arbitration under 47
14 U.S.C. § 252 and (2) the applicability of the 47 U.S.C. § 252 timelines in the Arbitration matter.
15 Each brief shall include citations to relevant legal authorities, legal analysis, and copies of any cited
16 legal authorities that are not readily available. **It is also requested that Staff for the Commission's**
17 **Utilities Division ("Staff") file such a brief by January 28, 2008.**

18 IT IS FURTHER ORDERED that a **hearing** in the Arbitration matter shall commence on
19 **February 11, 2008, at 10:00 a.m.**, or as soon thereafter as is practicable, at the Commission's
20 offices, 1200 West Washington, Phoenix, Arizona 85007. If consolidation of the Arbitration matter
21 and Complaint matter is ordered prior to February 11, 2008, the hearing will proceed as to both
22 matters. The hearing may be canceled or continued if it is determined prior to February 11, 2008,
23 that the Arbitration matter should be dismissed, that the timelines of 47 U.S.C. § 252 do not apply, or
24 that the matter should be delayed for good cause. **Staff is requested to appear and participate in**
25 **the hearing.**

26 IT IS FURTHER ORDERED that, if the hearing goes forward on the Arbitration matter alone
27 or on both matters (if consolidated prior to February 11, 2008), Qwest and Arizona Dialtone shall
28 equally share the costs for transcription and shall arrange and pay to have expedited transcripts


1 ("dailies") prepared and provided to the Commission's Hearing Division.

2 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
3 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
4 *pro hac vice*.

5 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized
6 Communications) applies to this proceeding and shall remain in effect until the Commission's
7 Decision in this matter is final and non-appealable.

8 IT IS FURTHER ORDERED that the Arbitrator/Administrative Law Judge may rescind,
9 alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or
10 by ruling at hearing.

11 DATED this 16th day of January, 2008.

12
13
14 
15 SARAH N. HARPRING
16 ARBITRATOR/ADMINISTRATIVE LAW
17 JUDGE

18 Copies of the foregoing mailed/delivered
19 this 16th day of January, 2008, to:

20 Norman G. Curtright, Corporate Counsel
21 QWEST CORPORATION
22 20 East Thomas Road, 16th Floor
23 Phoenix, AZ 85012
24 Attorney for Qwest Corporation

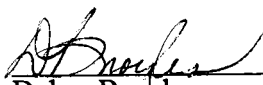
25 Matthew A. Klopp
26 Claudio E. Iannitelli
27 CHIEFETZ, IANNITELLI &
28 MARCOLINI P.C.
Viad Tower, 19th Floor
1850 North Central Avenue
Phoenix, AZ 85004
Attorneys for Arizona Dialtone, Inc.

1 Tom Bade, President
2 ARIZONA DIALTONE, INC.
3 7170 West Oakland
4 Chandler, AZ 85226

5 Christopher Kempley, Chief Counsel
6 Legal Division
7 ARIZONA CORPORATION COMMISSION
8 1200 West Washington Street
9 Phoenix, AZ 85007

10 Ernest G. Johnson, Director
11 Utilities Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, AZ 85007

15 ARIZONA REPORTING SERVICE, INC.
16 2200 North Central Avenue, Suite 502
17 Phoenix, Arizona 85004-1481

18 By: 
19 Debra Broyles
20 Secretary to Sarah N. Harpring
21
22
23
24
25
26
27
28